

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff(s),	)	No. CR 03-00107 WHA (BZ)
	)	
v.	)	
	)	
RAUL RODRIGUEZ GARCIA,	)	<b>ORDER OF DETENTION PENDING</b>
	)	<b>SUPERVISED RELEASE VIOLATION</b>
Defendant(s).	)	<b>HEARING</b>
	)	

On January 3, 2011, a hearing was held on the government's motion to detain defendant pending his probation violation hearing, presently scheduled before Judge Alsup for January 4, 2011. Defendant was present with counsel, Paul DeMeester. Assistant United States Attorney Derek Owen appeared for the government. Probation Officer Charles W. Mabie was also present.

On December 27, 2010, defendant's probation officer filed a petition alleging that defendant on a number of occasions violated the condition of his supervised release that he reside in a halfway house and observe its rules. The allegations include that defendant failed to provide

1 verification for a number of job sign outs, cursed at a staff  
2 member and had a container in his room which smelled of an  
3 alcoholic beverage. The Duty Judge found probable cause and  
4 issued a no bail warrant for defendant's arrest.

5 Because the defendant is charged with a supervised  
6 release violation, the burden of establishing that he is not a  
7 flight risk or a danger to the community rests with the  
8 defendant. Fed. R. Crim. P. 32.1(a)(6); 18 U.S.C. 3143.  
9 Those sections provide that a defendant shall be detained  
10 pending his revocation hearing unless the defendant  
11 establishes by clear and convincing evidence that he is  
12 neither a risk of flight nor a danger to the community.

13 Having considered the proffers by the parties and the  
14 probation officer, and the arguments of counsel, I find that  
15 the defendant has not established by clear and convincing  
16 evidence that he is not a risk of flight nor a danger to the  
17 community.

18 Defendant was detained after he initially appeared before  
19 me in March of 2003, suggesting he was then considered a risk  
20 of flight or a danger to the community or both. He was  
21 subsequently convicted and sentenced. As part of his sentence  
22 he was to reside for four months following his custodial term  
23 in a halfway house. He has had a series of problems in the  
24 halfway house which have lead to prior petitions and to  
25 modifications of the conditions of release. In connection  
26 with one earlier proceeding, he failed to appear and an arrest  
27 warrant was issued on August 25, 2010. In addition, his  
28 desire to be released raises this anomalous situation; that he

1 would be "rewarded" is in the short term at least for his  
2 alleged misconduct by being allowed to live with his parents  
3 until his hearing.

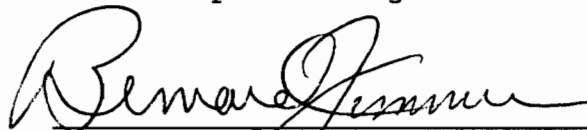
4 I therefore find that he has not persuaded me by clear  
5 and convincing evidence that he is no longer a danger to the  
6 community or a risk of flight and I further find that he is  
7 not amenable to supervision.

8 Therefore, pursuant to 18 U.S.C. § 3143(a), **IT IS ORDERED**  
9 that:

10 (1) defendant, Raul Rodriguez Garcia, be, and hereby is,  
11 committed to the custody of the Attorney General for  
12 confinement in a suitable facility where he shall be  
13 afforded reasonable opportunity for private  
14 consultation with his counsel; and

15 (2) on order of a court of the United States or on  
16 request of an attorney for the government, the  
17 person in charge of the corrections facility in  
18 which the defendant is confined shall deliver the  
19 defendant to an authorized Deputy United States  
20 Marshal for the purpose of any appearance in  
21 connection with a court proceeding.

22 Dated: January 3, 2011



23  
24 Bernard Zimmerman  
United States Magistrate Judge

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